

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

Geoffrey Asher,)	
)	
Plaintiff,)	
)	
vs,)	CIVIL ACTION
)	FILE NO. 2:08-CV-0035-WCO
Mark McClure, <i>et al.</i> ,)	
)	
Defendants.		

UPDATE AND MOTION TO LIFT STAY

COMES NOW Geoffrey Asher, Plaintiff, and hereby updates this Honorable Court as to the status of the state prosecution related to the events giving rise to this action, and further moves this Honorable Court lift the stay previously ordered on July 16, 2008.

Status of State Prosecution

Plaintiff was arraigned and entered a 'not guilty' plea in the state prosecution on July 23, 2008. On this same day, Plaintiff, through his criminal defense attorney, filed a Motion to Suppress evidence, alleging the same unconstitutional police misconduct as underlies this civil rights action. As of now the Lumpkin County Superior Court has not set any date for the Motion to Suppress to be heard.

Request to Lift Stay

The state prosecution of Plaintiff is not proceeding in a timely way. It has been over three months since Plaintiff's criminal attorney filed his Motion to Suppress alleging the same constitutional issues presented by this action. Since that time, the District Attorney has not sought to have that motion heard, and the Lumpkin County Superior Court has not even scheduled a date for the motion to be heard. There is no legitimate reason, particularly in light of the unexplained twenty-five month delay between arrest and indictment, for this motion to remain pending in the state court for over three months, without a hearing *even being scheduled*.

Additionally, it is Plaintiff's understanding that Defendant Mark McClure, who lost his election bid to remain Sheriff of Lumpkin County in July 2008, is intending to relocate overseas in the near future, for perhaps as long as one year, for a private sector job. Should Defendant McClure be overseas either during the discovery process in this case, or at the time of an as-yet-unscheduled suppression hearing in the state prosecution, Plaintiff's opportunity to adequately to pursue the constitutional question at issue will be substantially compromised. *See, For Your Eyes Alone v. City of Columbus*, 281 F.3d 1209, 1217 (11th Cir. 2002).

Because the state prosecution is not proceeding in a timely way, and because the current stay order will result in undue hardship to Plaintiff should the primary defendant in this action leave the country, thereby making discovery exceedingly difficult and further delaying a suppression hearing in the state prosecution, the stay order should be lifted.

Respectfully submitted this 29th day of October, 2008.

/s Matt Karzen
MATT KARZEN
Georgia Bar No. 408453
Counsel for Plaintiff

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CERTIFICATE OF SERVICE

I hereby certify that I this day served a copy of this pleading and attachment upon all parties by electronic filing through the CM/ECF system in accordance with United States District Court rules to:

Jason Waymire
William, Morris & Blum, LLC
Building 400, Suite A
4330 South Lee Street NE
Buford, GA 30518

This 29th day of October, 2008.

/s Matt Karzen
MATT KARZEN
Georgia Bar No. 408453
Counsel for Plaintiff